The Future of Voting in California

Secretary of State Hearing, February 8, 2010

Remarks by Kim Alexander

Thank you Secretary of State Debra Bowen, your staff, and all the people who have traveled to Sacramento to participate in this hearing today.

I am Kim Alexander, president of the California Voter Foundation (CVF), a nonprofit, nonpartisan organization I refounded in 1994 to advance the responsible use of technology in the democratic process.

For over twenty years I have been involved in elections in California, and for the past ten have been deeply involved in the topic of voting equipment and voting security. CVF was a leading proponent of the voter-verified paper audit trail requirement and also of advancing electronic filing and online disclosure of campaign finance reports, both in California and nationwide. CVF provides California voters with online access to reliable, nonpartisan information on propositions and candidates, via our web site, www.calvoter.org.

I have seen a lot of change over the years, but some things remain the same.

One of the biggest problems facing California voters is the lack of standardization in the voting process. We have 58 counties, and essentially 58 different voting systems. Every aspect of the process – large and small – varies from county to county. Some counties allow voters to look up their registration status online, some don't. Some promote vote-by-mail voting, others don't. The variation in polling place practices and poll worker training is mind-boggling. A 2008 study by the State Auditor on poll worker training reviewed the practices in eight counties and found that some appeared to train poll workers only partially in certain areas, such as cultural competency, rights of voters, and relevant election law, despite the Legislature's and Secretary of State's efforts over several years to standardize training across counties.

The UC Berkeley Election Administration Resource Center (EARC) has also conducted research into county poll worker programs and poll worker training since January 2005. The EARC found that:

> We observed a tremendous amount of variation across counties in their training of election workers, even where they shared the same voting machines and might reasonably conduct a similar training…..

> The most common reason for variation was the difference in organization of Election Day processes and materials, down to details such as color coding schemes or when to tear off a ballot stub. These procedural differences clearly

stem from each county election department evolving its own way over the years and reflecting the style of its managers.[1]

These variations in election practices, along with the variations and procedures applied in the use of voting equipment in California, make it enormously difficult for the public to have a clear sense of the rights to which they are entitled, or the ability to judge whether their county is following election law. It also creates a situation where not all voters in the state enjoy equal voting rights.

This lack of standardization continues today, as counties begin to acquire new devices to aid in their voting systems, such as ballot sorting and automatic signature verification machines. One was recently acquired by Sonoma County. It is my understanding the several other counties have similar systems in operation, and that none of these are subject to state certification, standards, or testing. There are no uniform procedures in place that say how these machines should be calibrated, or what to do in the case of a false negative, or worse, a false positive. It is enormously disturbing to me, after watching counties spend hundreds of millions on dollars on questionable voting equipment, some of which was purchased before it was certified by either the state or federal government, to continue acquiring new equipment without that equipment being required to meet any kind of statewide standard.

Clearly, some of this variation is a function of the several attempts made in recent years by state policy makers to make voting easier and more convenient for Californians. Whatever their intended effects, these efforts have also had the inadvertent effect of making the voting process more complex and confusing for voters. No voter attempting to register, cast a vote, or understand election results can be exactly sure of what to do or what to expect. The other vitally important consequence of this bewildering complexity is a loss of accountability. When things go wrong, is it an accident, is it incompetence, or is someone trying to shape electoral outcomes by manipulating the process?

Such questions most recently arose in California during the so-called "double-bubble" fiasco in Los Angeles County, where tens of thousands of votes cast in the Democratic presidential primary went uncounted due to poor ballot design and voter education. That episode led California Secretary of State Debra Bowen to comment, at a legislative hearing following the fiasco, that: *"(We are) in an election system that has evolved since the beginning of our history as a country in a way that we probably would not design if we were to design it today."*

One reason, I believe, why we find ourselves in this situation where we have such wide variations in election practices across the state is because of a lack of staffing and funding at both the state and county levels. There are simply not enough people or resources to conduct a big-picture analysis of California's election process. The priority is always to prepare for the next election, just around the corner, and this constricts the window of opportunity for thinking about and implementing systemic and comprehensive change.

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[1] University of California, Berkeley, Election Administration Research Center, "A Snapshot of California Poll Worker Training in 2005," (unpublished report, 2006).

If one county wants to begin an early voting program, for example, but another county cannot take on that additional responsibility, the practical and political solution has been to allow the county that has the resources to go forward but not impose a state mandate. This also has the advantage that the state does not have to fund the change. The downside of making public policy for voting and elections in this way in a large and diverse state like California is such a deeply embedded and structurally endemic lack of uniformity in election practices that fairness and accountability are jeopardized.

Yet another problem is that the voting rules are complex. Voters are drawn into nonsensical political districts, elect dozens of individuals to represent them in various public offices, and vote on numerous local and state propositions. The primary election rules get changed every other year. Then on top of all this, 58 counties are each running their own voting systems with unique procedures. It is inefficient, duplicative, wasteful, and most wretchedly, it ill-serves the voters of California. California voters are unnecessarily and unfairly disenfranchised because they get caught in a rabbits' warren of holes and missteps.

The development of uniform standards and procedures for election processes and polling place operations across the state could ensure a more predictable, positive, and consistent experience for California voters and provide a basis for holding election officials accountable. Greater uniformity would also make it easier for voter education groups to give voters accurate and precise information about what to expect from their experiences as voters. And it would reduce the workload on county election offices.

However, elections are one of the trickiest areas of public policy to reform. First of all they are perennial, they take place every two years (sometimes more frequently). It's not an ongoing problem, it is a problem that rises and falls before, during and after each election. Some crisis occurs, people are outraged, time passes and the issues are forgotten until they arise again.

It's also considered a "soft" area of government – i.e. not a life or death situation. It's like libraries and parks, not fire, law enforcement, hospitals. Funding for elections is easier to withhold because what's the downside? Nobody dies, and no one loses their jobs if people don't show up to vote.

Another reason why elections are hard to reform is because unlike every other area of public policy, election reform is an area where every politician is an expert. Each one has had a direct experience with a particular election problem. And they want their problem to be addressed. So it's hard to build consensus.

So how to overcome these barriers and make election reform possible, on a big scale? How could we achieve something so ambitious as uniform statewide voting standards? How do we "grow up" our voting system, replace what we are doing now with something efficient, something that equally enfranchises all voters, something less provincial and more inviting, where the rules are the same up and down the state, the instructions and

procedures are the same, we can all follow along and make sure the process is working properly?

First, at the state and local levels, there needs to be a more active constituency of concerned citizens speaking out for election resources. These folks also need to make sure that election reform doesn't fall off the table at the end of the year.

Secondly, county boards of supervisors and the legislature need to provide more, not less funding for elections. And lawmakers need to be more thoughtful about what they are doing to the election process and to voters when they change the laws willy-nilly.

Thirdly, metrics need to be developed – how do you know if an election is "good enough"? What is a "good enough" turnout? If we set some performance standards for accuracy, accountability and turnout, it would help the public and election officials alike know where to aim and provide a tool for measuring performance and progress over time. It may also motivate politicians to care more about election reform if they think the legitimacy of their own election victories could be called into question because of poor turnout.

We desperately need to create statewide voting standards for security, accountability, and participation. We need to give all California voters equal access to the voting process – to check their voter registration status online, to vote early, to observe the vote counting process. Then we will have a voting system worthy of this great state.

For additional commentary, see Kim Alexander's paper, "The California Voters' Experience – What Works for Them, What Does Not Work, and Where to Go From Here", available online at www.calvoter.org.